

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Local)

Competition Provisions in the)

Telecommunications Act of 1996)

CC Docket No. 96-98

**COMMENTS ON PETITION OF THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION FOR EXPEDITED WAIVER
OF THE TEN-DIGIT DIALING REQUIREMENT OF 47 C.F.R § 52.19
FOR 412 NPA OVERLAY AREA CODE RELIEF**

TELEPORT COMMUNICATIONS GROUP INC.
Teresa A. Marrero
Senior Regulatory Counsel - Federal
One Teleport Drive
Staten Island, New York 10311
(718) 355-2671

Paul Kouroupas, Vice President
Regulatory and External Affairs - Eastern Region
(202) 739-0030

No. of Copies rec'd
List ABCDE

04

SUMMARY

Teleport Communications Group Inc. ("TCG") opposes the Petition for Expedited Waiver of 47 C.F.R. § 52.19, submitted by the Pennsylvania Public Service Commission ("PaPUC"). The PaPUC has implemented an all-services overlay plan for the 412 NPA, but has not imposed mandatory ten-digit dialing as required by Section 52.19 of the Commission's rules. Therefore, the PaPUC order consigns competitive local exchange carriers' customers to ten-digit dialing. This is the type of anti-competitive and discriminatory effect that the Commission has sought to avoid. Although the PaPUC claims that "special circumstances" exist in this case, it has failed to show that it meets the Commission's waiver standard.

The PaPUC has cited as "special circumstances" the availability of interim number portability and the fact that some amount of 412 NPA NXXs have been issued to CLECs. However, interim number portability does not sufficiently ameliorate the discriminatory effects of an overlay plan in the absence of mandatory ten-digit dialing, because it leads to longer call set-up times, incumbent access to competitors' proprietary information, complicated resolution of customer complaints, increased potential for call blocking, and substantial costs to new entrants. Without permanent number portability, an overlay plan remains inherently discriminatory, because the CLEC is prevented from offering service to its customers that is equal in quality to the ILECs'.

Second, the PaPUC's NXX data does not show that CLECs have sufficient NXXs. The information is misleading because it includes data for NXXs issued to

wireless carriers, which far outnumbers the NXXs issued to wireline carriers, and it does not explain that NXXs are tied to rate centers. This means that numbers for an NXX block may only be used for end users that are actually served in a particular rate center. Therefore, a CLEC could have a large quantity of numbers, but still may not be able to service customers simply because those customers are located in a different rate center.

The PaPUC's plan, in its current form, is contrary to the public interest, because it is anti-competitive and treats customers differently. According to the PaPUC 412 NPA plan, CLEC customers will be required to place ten-digit calls out of the overlay code on a disproportionate basis. Finally, no good cause has been shown for granting the PaPUC the waiver it requests, especially since the PaPUC's own delay in addressing its federal obligations is the basis for its expedited request.

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. THE PENNSYLVANIA PUC REQUEST FOR WAIVER FAILS TO MEET THE COMMISSION'S STANDARD	3
A. No "Special Circumstances" Exist to Warrant Permitting Seven-Digit Dialing Under an Overlay Plan	3
1. The Commission Has Already Determined that Mandatory Ten-Digit Dialing is Required, Even When Interim Number Portability Has Been Implemented	5
2. The PaPUC's Claims Regarding NXX Availability to CLECs is Misleading	7
B. Waiver of Section 52.19 of the Commission's Rules is Contrary to the Public Interest	9
C. No Good Cause Has Been Shown for the Commission to Waive its Rules	11
III. CONCLUSION	12

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions in the)	
Telecommunications Act of 1996)	

**COMMENTS ON PETITION OF THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION FOR EXPEDITED WAIVER
OF THE TEN-DIGIT DIALING REQUIREMENT OF 47 C.F.R § 52.19
FOR 412 NPA OVERLAY AREA CODE RELIEF**

Teleport Communications Group Inc. ("TCG") hereby opposes the Petition for Expedited Waiver of 47 C.F.R. § 52.19, submitted by the Pennsylvania Public Service Commission ("PaPUC"). In ruling on this Petition, the Commission should reiterate that no overlay can be implemented unless mandatory ten-digit dialing is also imposed.

I. INTRODUCTION

The Commission released its Second Report and Order¹ implementing the local competition provisions of the 1996 Act on August 8, 1996. Exercising its exclusive jurisdiction over numbering issues as set forth by Section 251(e)(1) of the Communications Act, the Commission concluded that a state commission may adopt an all-services overlay plan only if (1) mandatory ten-digit dialing is

1. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, FCC 96-325 (released August 8, 1996) ("Second Report and Order"), petitions for review pending sub nom., The People of the State of California, et al. v. FCC, No. 96-3519 and consolidated cases (8th Cir.).

implemented and (2) every existing telecommunications carrier is issued at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.² These conditions are intended to counter the inherent anticompetitive effect of any overlay plan.

Prior to the release of the Second Report and Order, the PaPUC had adopted its 412 Area Code Order.³ The PaPUC adopted its order on June 20, 1996, and the order was not entered until September 12, 1996. At the time the PaPUC entered its order, it was fully cognizant that the order did not comply with the FCC's requirements for the imposition of an all-services overlay.⁴

2. See Second Report and Order at ¶ 286 (footnote omitted). TCG has requested that the Commission revise its NXX condition to require the issuance of one NXX per rate center, rather than per NPA. See TCG Petition for Reconsideration, CC Docket No. 96-98 (filed October 7, 1996) at 3-7; TCG Petition for Declaratory Ruling, NSD File No. 96-9 (filed July 12, 1996) at 19-24.

3. Petition of NPA Relief Coordinator Re: 412 Area Code Relief Plan, Docket No. P-000961027, Order (entered September 12, 1996) ("412 Area Code Order").

4. Several parties submitted Petitions for Reconsideration of the PaPUC's order. In addition, the Commonwealth Court of Pennsylvania is hearing appeals of the 412 Area Code Order on various issues, including the 7-digit dialing provision. County of Allegheny v. Pennsylvania Public Utility Commission, No. 2745 C.D. 1996; MCI Telecommunications Corp. v. Pennsylvania Public Utility Commission, No. 2879 C.D. 1996 (consolidated cases). Having learned that implementation of the invalid plan is moving forward, TCG also has filed an Emergency Motion to Modify Order requesting that the implementation date be extended so as to prevent further implementation, until the validity of the 412 Area Code Plan has been determined. Ironically, TCG's Emergency Motion was filed with the PaPUC on the same day that the PaPUC sent its Petition for Expedited Waiver to the Commission.

II. THE PENNSYLVANIA PUC REQUEST FOR WAIVER FAILS TO MEET THE COMMISSION'S STANDARD

The Commission will grant a request for waiver only if the standard articulated in WAIT Radio v. FCC⁵ and Northeast Cellular Telephone Co. v. FCC⁶ is satisfied. The Commission "must explain why deviation [from the general rule] better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."⁷ The PaPUC has failed to show that it meets the Commission's waiver standard.

Any rationale offered by the PaPUC in support of its petition for waiver must be viewed in its proper context. As noted above, the PaPUC 412 Area Code Order was entered after this Commission set forth the conditions for imposition of an all-services overlay, knowing that its order did not meet the FCC's requirements. The PaPUC then waited seven months after issuing the order before requesting a waiver. This sequence of events alone undermines any suggestion that the PaPUC now is confronting "special circumstances" that merit an expedited waiver.

A. No "Special Circumstances" Exist to Warrant Permitting Seven-Digit Dialing Under an Overlay Plan

The Commission has found that ten-digit dialing in the event of an all-services overlay plan is necessary so as not to disadvantage competitors.

5. 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

6. 897 F.2d 1164 (D.C. Cir. 1990).

7. Northeast Cellular, 897 F.2d at 116.

Notwithstanding the FCC's requirement, the PaPUC's order provides that "all LECs should continue the use of seven-digit dialing within the area code to the extent technically feasible and for as long as it remains feasible."⁸ It consigns competitive local exchange carriers' ("CLECs") customers alone to ten-digit dialing, which is precisely the result the Commission has sought to avoid. The PaPUC's 412 NPA overlay plan allows LEC customers to continue to use seven-digit dialing for so long as such practice remains technically feasible, but CLEC customers will be required to dial ten-digits to place almost all their calls upon implementation of that plan. As this Commission correctly found:

Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area code, while new users with the overlay code would have to dial 10-digits to reach any customers in the old code.⁹

The "special circumstances" cited by the PaPUC — the availability of interim number portability and the fact that some amount of 412 NPA NXX's have been issued to CLECs — clearly do not justify a waiver of the mandatory ten-digit dialing requirement.

8. 412 Area Code Order at 14.

9. Second Report and Order at ¶ 287.

1. The Commission Has Already Determined that Mandatory Ten-Digit Dialing is Required, Even When Interim Number Portability Has Been Implemented

This Commission adopted the ten-digit dialing requirement after it issued its Telephone Number Portability Order,¹⁰ wherein it established schedules for permanent number portability and required implementation of currently available interim number portability measures. The sequence of these orders demonstrates that the Commission concluded that the availability of interim number portability did not adequately address dialing parity concerns raised by overlay plans.

The Commission's discrete findings regarding conditions for overlay plans and number portability are appropriate, because interim number portability does not sufficiently ameliorate the discriminatory effects of an overlay plan in the absence of mandatory ten-digit dialing. Disadvantages to interim number portability that were identified in the Commission's Telephone Number Portability Order include "longer call set-up times, incumbent access to competitors' proprietary information, complicated resolution of customer complaints, increased potential for call blocking, and substantial costs to new entrants."¹¹ The California Public Utilities Commission ("CPUC") similarly has determined that an overlay plan can only satisfy the test of competitive neutrality if permanent number portability, in addition to mandatory ten-digit dialing, is in place to counter the inherent

10. 11 FCC Rcd 8352 (1996).

11. Id. at 8405-8406.

anticompetitive effects of such a plan.¹² The CPUC cited in this regard call transmission degradation, loss of some CLASS features, simultaneous call limitations to individual members, problematic 911 routing, operator services impact, and potential billing confusion.¹³ Unavailability of these CLASS features present a particularly significant competitive disadvantage.¹⁴

¹⁵ Moreover, interim number portability is not a suitable solution due to the "increased risk of premature code exhaustion due to the double assignment of numbers for remote call forwarding."¹⁶ Simply put, the deficiencies of an overlay plan cannot be sufficiently ameliorated in the absence of permanent number portability and mandatory ten-digit dialing. Contrary to the PaPUC's claim that the interim number portability "significantly lessen[s]" the Commission's concerns regarding overlay plans, TCG has shown that this is not the case.

12. See Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision No. 96-08-028, 1996 Cal. PUC LEXIS 848 (August 2, 1996) ("CaPUC Order").

13. Id. at *36.

14. Without these CLASS features, a CLEC is unable to offer services like call waiting, call forwarding, and voice mail, which consumers have come to expect, effectively imposing "line of business" restrictions on CLECs.

15. See TCG Petition for Reconsideration, CC Docket No. 96-98 at 8-12; see also TCG Petition for Declaratory Ruling at 14-19.

16. CaPUC Order at *35-*36.

2. The PaPUC's Claims Regarding NXX Availability to CLECs Is Misleading

The PaPUC also cites as a "special circumstance" its analysis that "one out of every three useable NXXs" in the 412 area code will have been issued to CLECs to support the assertion that CLECs have plenty of numbers in the 412 NPA so as not be competitively disadvantaged.¹⁷ The PaPUC's claims are misleading for two reasons. First, the PaPUC's data for CLECs includes data for NXXs issued to wireless carriers. Wireline CLECs have been issued significantly fewer NXXs than represented by the PaPUC. Second, the PaPUC's data regarding the 412 NXX code distribution does not address important characteristics of number assignments. NXXs are assigned in 10,000 number blocks from a particular rate center and may only be used for end users that are actually served in that rate center. The criteria for assigning numbers, therefore, is based not on the carriers' needs and their customer demand, but based solely on the ILEC rate center and billing structure. For this reason, a CLEC could have a large quantity of numbers, but still may not be able to service customers simply because those customers are located in a different rate center.

This also means that a CLEC that receives a request from a customer served by a rate center from which the CLEC has no 412 NPA NXXs could only issue a number from the new NPA. Under the PaPUC 412 Area Code Order, this customer will have to dial ten-digits for most calls. In contrast, Bell Atlantic has NXX codes

17. PaPUC Petition for Expedited Waiver at 7.

and available numbers for every rate center in the 412 NPA and will rarely face the same number shortage as the CLEC. Therefore, the CLEC cannot operate on a level playing field with the ILEC with respect to number resources unless it has been issued at least one NXX block consisting of 10,000 numbers for each and every rate center in the 412 NPA.¹⁸ As the PaPUC's numbers show, this requirement cannot be met.

There are 99 rate centers in the 412 NPA, which have been established by Bell Atlantic. TCG has 42 NXXs for 42 different rate centers. This means that TCG is precluded from offering services to customers in 57 of the 99 rate centers. Therefore, the PaPUC's claim that there are sufficient NXX codes available to CLECs is wrong, because if TCG ordered the additional 57 NXX codes it needs to offer service throughout the entire 412 NPA, then only one 412 NXX would be available for the remaining CLECs.¹⁹

18. TCG has proposed a plan that does not require the assignment of a unique NXX code for every rate center, but instead permits a single NXX code to be utilized over multiple rate centers. Under TCG's proposal, each carrier would be assigned at least one NXX code that is assigned to that carrier's switch. However, once the NXX code has been assigned, the carrier would have the option of spreading that 10,000 number block over many rate centers according to the carrier's specific needs and its customer demand. See TCG Petition for Declaratory Ruling at 19-24.

19. In fact, TCG can only order a maximum of three NXX codes per month from the Bell Atlantic code administrator as a result of a previous PaPUC action adopting Bell Atlantic's code rationing plan.

B. Waiver of Section 52.19 of the Commission's Rules is Contrary to the Public Interest

The PaPUC claims that it is running out of time to comply with the Commission's rule while implementing its 412 overlay plan. However, this does not support the implied argument that to avoid number exhaust the Commission must expeditiously grant the PaPUC petition in the public interest. The public interest is better served if the PaPUC immediately enforces implementation of the ten-digit dialing requirement, consistent with the Commission's findings and with sufficient time to avoid number exhaust.

Notably, the PaPUC has not claimed that parties would be unable to comply with the ten-digit dialing requirement in order to still meet its May 1, 1997 implementation date. In addition, as the PaPUC's waiver request indicates, implementation measures for the existing plan are far from complete, for it states that "technical and central office changes must be made" by Bell Atlantic and other carriers.²⁰ With regard to education efforts, the PaPUC states that "[t]hese programs must begin very soon in order to be timely and effective",²¹ similarly indicating that customers may be easily educated with respect to a plan that is in accordance with the Commission's rules.

Moreover, the PaPUC plainly feels that it is important to retain seven-digit dialing for its consumers. The appropriate way to achieve this result, however,

20. PaPUC Petition for Expedited Waiver at 8.

21. Id.

would have been to impose a geographic code split, but the PaPUC chose not to do so. Indeed, TCG has advocated a geographic code split throughout the 412 NPA proceeding. Having selected an overlay plan, though, the PaPUC must be required to implement the conditions that have been imposed by the Commission to address its inherent anti-competitive effects.

The PaPUC's plan, in its current form, is contrary to the public interest, which favors competition and treating consumers equally. According to the PaPUC plan, CLEC customers will be disproportionately disadvantaged. Implementation of an overlay plan without mandatory ten-digit dialing shifts the so-called "inconvenience"²² of ten-digit dialing only to the customers of CLECs. These customers will be required, therefore, to place ten-digit calls out of the overlay code on a disproportionate basis. In addition, Bell Atlantic will have a readily available supply of numbers in the existing area code for the foreseeable future.²³ Because of the issues with regard to NXX blocks discussed above, ILECs will have available numbers in the existing area code for a considerable time, while CLECs will be assigning numbers from the overlay code immediately and with regularity. This disparity is the hallmark of an anticompetitive and discriminatory practice and

22. PaPUC Petition for Reconsideration, CC Docket No. 96-98 (filed October 7, 1996) at 4.

23. Bell Atlantic benefits from its ability to warehouse numbers and from number churn, whereby numbers from the existing area code are returned for their use. See Second Report and Order at ¶ 289.

specifically support the Commission's assumptions upon which its adoption of the ten-digit dialing requirement were based.

C. No Good Cause Has Been Shown for the Commission to Waive Its Rules

No good cause has been shown for granting the PaPUC the waiver it requests.²⁴ The PaPUC has been on notice of the Commission's ten-digit dialing requirement since August 8, 1996. The PaPUC's own delay in facing up to its federal obligations should not be a reason for granting its request. As explained above, the PaPUC's concerns with respect to number exhaust are addressable by that agency without victimizing competition and unjustifiably waiving the Commission's fundamental requirements regarding permissible overlay plans.

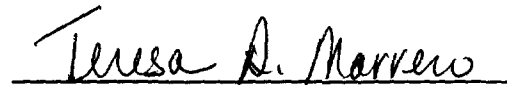
24. 47 C.F.R. § 1.3.

III. CONCLUSION

For these reasons, the Commission should deny the Pennsylvania Public Utility Commission's Petition for Expedited Waiver of the ten-digit dialing requirement to implement is 412 Area Code Order.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

A handwritten signature in cursive script, reading "Teresa A. Marrero", is written over a horizontal line.

Teresa A. Marrero
Senior Regulatory Counsel - Federal
One Teleport Drive
Staten Island, New York 10311
(718) 355-2671

Paul Kouroupas, Vice President
Regulatory and External Affairs - Eastern Region
(202) 739-0030

CERTIFICATE OF SERVICE

I, Janet Johnson, do hereby certify that a copy of Comments on Petition of the Pennsylvania Public Utility Commission for Expedited Waiver of the Ten-Digit Dialing Requirement of 47 C.F.R. § 52.19 for 412 NPA Overlay Area Code Relief was sent by first-class mail, postage prepaid on this 7th day of March, 1997 to the following:

Maureen A. Scott
Assistant Counsel
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

William F. Caton*
Federal Communications
Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

ITS*
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Chief, Network Services Division*
Room 235
2000 M Street, N.W.
Washington, DC 20554


Janet Johnson

*via hand delivery